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April 25, 2024

BY CM/ECF

The Hon. Ellen L. Hollander
U.S. District Court Judge
U.S. Courthouse
101 W. Lombard Street
Baltimore, Maryland 21201

Re: *United States v. Jacky McComber*
Crim. No. ELH-21-036

Dear Judge Hollander:

I am writing to address some important and urgent matters with respect to the defendant's upcoming sentencing.

As the Court knows, our supplemental sentencing reply brief is due on Friday, May 3rd, two weeks prior to the March 17th sentencing date. However, last Friday evening, the five defense attorneys in this case filed the following two sentencing briefs:

Defendant's Two Sentencing Briefs	Length of Each Brief	Pages of Attachments to Each Brief
Defendant's Sentencing Memorandum (ECF # 433) (filed under seal)	The text of the brief itself is 17 pages . However, Exhibit A is a Social History Report on the defendant prepared by an employee of the FPD's Office that consists of 18 single-spaced pages , which we will also need to respond to. And we had never previously seen this report before this filing.	Exhibits B-L total 153 pages . Exhibit B consists of 43 pages of letters of support for the defendant from family members and friends, most of which are single-spaced. Exhibit F, the medical records of the defendant's third child, run 39 largely single-spaced pages, much of which is in small type.

Defendant's Objections to Government's Proposed Guideline Enhancements and Presentence Investigation Report (ECF # 435)	The text of this brief is 76 pages long.	The brief is accompanied by 711 pages of exhibits. These include roughly 315 pages of discovery produced by the two sides; 180 pages of NSA investigative transcripts, trial transcripts, and trial exhibits; and 200+ pages of other materials. See Exhibit A (no equivalent document exists for the defendant's first brief because it was filed under seal, and thus the Clerk's Office did not generate a similar index.)
Totals:	93 pages , plus the 19 single-spaced pages of the FPD's social worker's report, which is all factual argument that could easily have been put forward in their sentencing memo, and that we will have to respond to.	864 pages.

Needless to say, this is an extraordinary volume of material to submit in connection with a sentencing proceeding – particularly in a case where the only issues affecting the Guidelines calculation are the amount of the loss and whether the defendant obstructed justice. I never remotely expected that I would be receiving anything this voluminous from the defense at this point in the case.

Obviously, the Court will also need to assess whether its schedule and responsibilities with regard to its other cases will allow it a reasonable amount of time to prepare for the sentencing hearing, given the sheer mass of material presented by the defense that must now be digested.

Moreover, our concerns about the defense's filings go beyond the large mass of material they have dropped upon us and the Court. As noted above, not only did we just receive the FPD's social worker's report, but she offers expert opinions about her assessment of the defendant's veracity with regard to her allegations against her former husband and other matters that clearly mean she should be subject to cross-examination – yet no one was expecting any witnesses to be offered at this sentencing hearing.

In addition, the defendant's second brief above has now offered a new approach to calculating the amount of the loss that replaces what they filed as part of their Rule 29 filing, which was subsequently rejected by the Court. But Agent Benderoth, who is the lead investigator responsible for our loss calculations and who gave the loss-related testimony we have presented, is leaving the country tomorrow and won't be back until Monday, May 13th. And though I have had very little time to review it, my sense is that this is again something for which the defense should be required to present a witness to explain its basis and undergo cross-examination, just as we did *twice* with Agent Benderoth – first during the trial, and then again during last November's sentencing hearing.

On top of these issues, the oral argument before the Fourth Circuit in *United States v. Banks*, the RICO gang appeal that I had to take over back in September, is scheduled for Tuesday, May 7th. The record in that case is beyond voluminous – it is 8,400 pages long. I need a reasonable amount of time complete my preparation for that appellate argument, given the mammoth size of the record and the fact that the five defendants have raised 15 arguments between them. Moreover, we must also deal in this case with the issues presented by the defense's desire to file their Sentencing Memorandum and the 170 pages of Exhibits A-L that accompany it under seal as well.

I must therefore advise the Court that I simply do not see how a single attorney who is also obliged to deal with the oral argument in the *Banks* appeal less than two weeks from now can respond to the massive volume of materials submitted by the defense last Friday night within the existing deadlines. Accordingly, we request that the Court schedule a conference call at its earliest convenience to address this matter.

Very Truly Yours,



Jefferson M. Gray

cc: All counsel (by ECF)

Document Selection Menu

Case 1:21-cr-00036-ELH Document 440 Filed 04/26/24 Page 4 of 4

Select the document you wish to view.

Document Number: ☒ 435

78 pages

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Attachment

Description

Pages

Size

<input checked="" type="checkbox"/>	<u>1</u>	Index of Exhibits	1 page	109.0 KB
<input checked="" type="checkbox"/>	<u>2</u>	Exhibit A	31 pages	3.3 MB
<input checked="" type="checkbox"/>	<u>3</u>	Exhibit B	37 pages	3.1 MB
<input checked="" type="checkbox"/>	<u>4</u>	Exhibit C	34 pages	18.0 MB
<input checked="" type="checkbox"/>	<u>5</u>	Exhibit D	7 pages	595.7 KB
<input checked="" type="checkbox"/>	<u>6</u>	Exhibit E	18 pages	883.3 KB
<input checked="" type="checkbox"/>	<u>7</u>	Exhibit F, Part 1	216 pages	23.3 MB
<input checked="" type="checkbox"/>	<u>8</u>	Exhibit F, Part 2	109 pages	20.5 MB
<input checked="" type="checkbox"/>	<u>9</u>	Exhibit G	60 pages	9.8 MB
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*Exhibit A - Defendant's Sentencing
Brief re Guideline Enhancements and
the Objections
to the Presentence
Report*